

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Hydrochem Industrial Services Inc.
[3 TTUs: TTU 002, TTU 003, TTU 004]
901 Loveridge Road
P.O. Box 1859
Pittsburg, CA 94565
(Contra Costa County)

EPA ID No: CAD 000 628 271

Respondent.

Docket No. HWCA 20040417

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Hydrochem Industrial Services Inc. (Respondent) enter into this Consent Order and agree as follows:

1. Respondent operated Transportable Treatment Units (TTUs) that treated hazardous waste at various sites. The 1996 renewal notification for TTU 002 listed its physical address as 301 Crenshaw Boulevard, Torrance, California 90503. Renewal notifications for TTU 003 and TTU 004 list their physical address as Hydrochem Industrial Services, Inc., End of Loveridge Road, Pittsburg, California 94565. Respondent still uses the physical location for business purposes at 901 Loveridge Road, P.O. Box 1859, Pittsburg, California 94565. Respondent's corporate address of 900 Georgia Avenue, Deer Park, Texas 77536 is also its preferred mailing address.
2. The Department investigated the compliance and closure status of Respondent's TTUs (TTU 002, TTU 003, and TTU 004, collectively "the Three TTUs") in 2003.

2.1 Respondent submitted proper closure plan and certification documents for TTU 001, resulting in a letter of closure from the Department on September 3, 1999. The Respondent mistakenly paid a total of \$76 for 2001 and 2002 fees as a Conditionally Exempt Specified Waste stream for TTU 001 as billed by the California Board of Equalization (BOE) after proper closure of TTU 001.

2.2. The Respondent has either used parts of the Three TTUs to repair other units, and has sold or otherwise transferred ownership such that it can no longer trace the whereabouts of the Three TTUs. Because the units are no longer available for inspection, Respondent cannot certify the Three TTUs for proper closure and compliance. For these reasons, the Three TTUs remain not properly closed under California law as of January 20, 2004.

2.3. Respondent provides no documents that relate specifically to the Three TTUs. However, Respondent states as a material fact to this Consent Order that its agent(s), employee(s) and/or contractor(s) properly decontaminated each of the Three TTUs before dismantling or otherwise removing the units from service. By signing below, Respondent adopts this paragraph as a true and correct statement of fact to the best of its knowledge.

3. The Department alleges the following violations:

3.1. The Respondent violated Title 22, California Code of Regulations, section 67450.3(a)(13), in that on or before April 2003, when the Department investigated the violation(s), Respondent failed to submit a certification signed by the owner or operator, and by an independent, professional engineer registered in California, that closure of each of the Three TTUs (TTU 002, TTU 003, and TTU 004) had been completed in accordance with the closure plan and that the closure plan met or exceeded the applicable requirements of Title 22, California Code of Regulations, Chapter 45.

4. Except to the extent noted below, the parties agree not to address fee issues in this Consent Order.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent does not admit the violations alleged above, except as follows: Respondent admits the facts alleged above for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the date the violations occurred.

SCHEDULE FOR COMPLIANCE

10. Respondent cannot meet the regulatory requirements for closure of the Three TTUs (TTU 002, TTU 003, and TTU 004). Therefore, other than payment of the penalty amount, no schedule for compliance will enable Respondent to achieve compliance for the violation listed in section 3.1.

10.1 Respondent shall make all payments as indicated in paragraph 11 and its subparagraphs below.

10.2. Submittals. All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

10.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

10.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the

terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction.

Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3 in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

10.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11.1. Within 90 days of the effective date of this Consent Order, Respondent shall pay the Department a total sum of \$34,360, of which \$29,924 is a penalty and \$4,436 is reimbursement of the Department's costs. If the Respondent successfully completes the conditions specified in paragraph 11.5, this total sum shall be reduced by \$5,000. This total sum already reflects a reduction of \$76 to reimburse Respondent for fees it mistakenly paid as a Conditionally Exempt Specified Waste Stream treatment facility for 2001 and 2002.

11.2. Payment is due in two portions as follows:

<u>Payment</u>	<u>Due</u>
#1: \$29,360 = \$24,924 (Penalty) + \$4,436 (to reimburse costs)	90 days from the effective date of this Consent Order (paragraph 12.4)
#2: \$5,000 or Compliance School Certificates for at least three employees (as provided below).	185 days from the effective date of this Consent Order (paragraph 12.4).

11.3. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall be delivered with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

To: Vivian Murai, Staff Counsel
Office of Legal Counsel & Investigations
Department of Toxic Substances Control
1001 I Street, 23d Floor
P.O. Box 806
Sacramento, CA 95812-0806.

11.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

11.5. The \$5,000 portion of the penalty shall be due within 185 days of the effective date of this Consent Order unless the Department has received Certificates of Satisfactory Completion showing that at least three (3) of Respondent's employees satisfactorily completed the California Compliance School, Modules I – V. Timely submission of the certificates shall satisfy Respondent's obligation to pay this latter \$5,000 portion of the penalty.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this agreement.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated: August 13, 2004

Patricia K. Burns, Chief Financial Officer
Hydrochem Industrial Services Inc.
Respondent

Dated: August 16, 2004
(Effective Date)

Charles A. McLaughlin
Charles A. McLaughlin, Chief
Northern California - Central
State Oversight and Enforcement Branch
Statewide Compliance Division
Department of Toxic Substances Control